

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 04-0267P

Income Tax

For the Short Period ended February 28, 2002

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late payment and filing of the Short Period return for the period ended February 28, 2002. The taxpayer is an Indiana company.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer argues the penalty should be abated. The taxpayer's argument includes (1) the definition of inattention, (2) the fact that the IRS would abate the penalty, and (3) the compliance record.

With regard to the compliance record, the taxpayer has had three errors. One error occurred in the year 2000. Two errors occurred in the year 2001. The Department does not feel the taxpayer's compliance record would be a factor in the abatement of penalty.

With regard to IRS abatement, the Department does not follow IRS guidelines in the abatement of penalty.

With regard to the definition of inattention. Webster's Unabridged Dictionary states inattention is the failure to carryout, or perform, as a result of disregard. The Department

feels the taxpayer demonstrated disregard of tax duties in that the taxpayer did not prepare for the tax ramifications of a planned IRS section 338 sale.

The regulation which controls the application of penalty is 45 IAC 15-11-2(b) which states,

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer.

Negligence would result from a taxpayer's

carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations.

Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.